

Opinion No. 85-03

April 29, 1985

OPINION OF: Paul Bardacke, Attorney General

BY: Christopher Carlsen, Attorney General

TO: The Honorable David W. Bonem, Ninth Judicial District Attorney, Curry County Courthouse, Clovis, New Mexico 88101

FACTS

Municipal law enforcement officers frequently arrest persons for violations of state criminal statutes. In the Ninth Judicial District persons incarcerated following such arrests are considered municipal prisoners, for whose expense, upkeep and medical care the arresting municipality is responsible until the prisoner is arraigned in magistrate court on a state criminal charge.

QUESTIONS

QUESTIONS PRESENTED

1. When does a county become responsible for paying for the expenses and upkeep of prisoners arrested on state criminal charges by municipal law enforcement officers?
2. When does a county become responsible for paying for medical costs of indigent prisoners arrested on state criminal charges by municipal law enforcement officers?

CONCLUSIONS

1. At the time that the prisoner is delivered to the actual custody of the county jail.
2. Same as 1, except for county residents. (See analysis.)

ANALYSIS

Section 33-3-3 NMSA 1978 provides:

The jail in each county shall be used for the retention of every persons or persons who, within the same county, shall be charged with any crime, or properly committed for trial, or for the imprisonment of every person or persons who in conformity with sentence, upon conviction of an offense may have been sentenced, and for the safekeeping of every person who shall be committed by competent authority, according to law. [Emphasis added.]

Section 33-3-12A NMSA 1978 provides:

Every public officer who has power to order the imprisonment of any person for violation of law shall, on making such order, transmit to the sheriff, jail administrator or independent contractor of his respective county a true copy of the order so that the person imprisoned may be considered under his custody until expiration of the commitment or until further steps, as provided by law, are taken to obtain the prisoner's liberty, of which he shall, in due time, notify the sheriff, jail administrator or independent contractor in writing.

Section 33-3-13 NMSA 1978 provides:

All persons charged with crime committed in the state, while awaiting indictment or trial on such charge, shall be incarcerated in the county jail of the county wherein such crime is alleged to have been committed or any facility operated by agreement between such counties or municipalities, except that such persons may be temporarily imprisoned in other places of confinement while being conveyed or awaiting conveyance to the jail of the proper county. . . [Emphasis added.]

Section 33-3-14 and 33-3-15 NMSA 1978 provide that any county prisoners transferred to other counties or to the Penitentiary for safekeeping remain the expense of the county from which they are transferred.

OPINION

In **State v. Board of County Commissioners of San Juan County**, 39 N.M. 310, 46 P.2d 669 (1935) the Supreme Court summed up the statutes as follows:

Our statutory policy seems plain that one charged with crime and in the custody of the sheriff awaiting trial is a county prisoner.

39 N.M. at 311

Thus two elements must be present to make a prisoner the county's responsibility. First, the person must be charged with a crime and second he must be in the sheriff's or county jail's custody.¹

As regards the first element, the Supreme Court has said:

The word "charge" denotes a wrongful act, subjecting the person charged to criminal prosecution in the name of the state. As used in our criminal pleadings, the words "charge" and "accuse" are used interchangeably, and are synonymous.

Ex parte Williams, 58 N.M. 37, 41, 265 P.2d 359 (1954).

Although **Williams** dealt with charges in a criminal information, the Supreme Court's definition has general application, particularly since the reference to "accuse" has no apparent relevance to the specific facts of the case. Thus, a person is accused of a wrongful act subjecting him to criminal prosecution at the time of arrest, and is therefore "charged" with a crime and in custody from that time forward. **Washington Township Hospital District v. County of Alameda**, 69 Cal. Rptr. 442, 447, 263 Cal.App.2d 272 (Ct.App. 1968).

Nonetheless, the mere fact that a person is charged with a crime does not mean he is in the county jail's custody nor make him the county jail's responsibility. Section 33-3-13, **supra** provides that a person charged with a crime may be temporarily incarcerated in places other than the county jail, and Section 33-3-12A, **supra** specifies that certain paperwork formalities must be completed to place a person in county jail custody. Hence, the custody element must be present as well.

Attorney General Opinion 68-21 reinforces the custody requirement. That opinion addressed the question of whether a county is liable for "board bills" for prisoners arrested by municipal police and temporarily confined in municipal jail for state law violations. The opinion analyzed the question as follows:

[W]hen a municipal police officer has arrested a person for violation of a state law or municipal ordinance he is not acting under authority granted him by a county sheriff. By performing his duties the municipal police officer is acting as the agent of the municipality. He is executing the power of the municipality to protect property and preserve [sic] peace and order. And when the municipal police officer places an offender he has arrested in the municipal jail it is still the power of the municipality which is being exercised.

The opinion concludes that, so long as municipal power is being exercised, the municipality is responsible for prisoner costs and expenses.

Although the opinion does not address the specific issue presented here, we think its line of reasoning applies. It is our opinion that a person arrested for violation of state law by a municipal police officer exercising municipal authority remains the municipality's responsibility and liability while such municipal authority is being exercised. A county's responsibility for such person begins only at the time that the municipal police officer or other municipal employee actually delivers the prisoner to the custody of the county jail. Section 33-3-3, 33-3-12A and 33-3-13, **supra**. Normally, this occurs when the prisoner is physically delivered to the county jail or other designated county jail intake facility, along with any appropriate paperwork. **See** Section 33-3-12A, **supra**.

This means, for example, that incarceration costs incurred for persons arrested by municipal police officers would be the expense of the municipality until the prisoner was delivered to the actual custody of the county jail. Similarly, medical expenses of indigent persons would be a municipal expense until such time. **See, University Hospitals v. City of Cleveland** 276 N.E. 2d 273 (Ohio Com. Pl. 1971). However, we note that

ambulance and hospital expenses of indigents resident in a county are an exception to this general rule in all except class A counties. Such expenses are exclusively a county responsibility. Section 27-5-2 NMSA 1978.²

The foregoing principles apply only to persons arrested by municipal police for violations of state criminal laws. If municipal prisoners are housed in a county jail for violation of municipal laws, such prisoners remain municipal prisoners and may be housed in the county jail subject to such requirements as may be imposed by law and the board of county commissioners. Such requirements may include a charge to the municipality for custody. Section 3-18-20 NMSA 1978; AG Opinion 79-41; **also see**, Section 35-15-6 NMSA 1978.

In conclusion, a county becomes responsible for paying the expenses and upkeep of prisoners arrested by municipal police on state charges at such times as the prisoners are delivered to the actual custody of the county jail, along with any necessary paperwork. A county becomes responsible for medical costs of indigent prisoners at the same time and in the same circumstances. However, ambulance and hospital expenses for indigent county residents are always a county responsibility, except in the case of class A counties.

ATTORNEY GENERAL

Paul Bardacke, Attorney General

[n1](#) A county cannot evade its responsibility, of course, by refusing to accept custody of prisoners actually delivered to the county jail.

[n2](#) In class A counties, the municipality becomes responsible for ambulance and hospital expenses on the same basis and in the same circumstances as all other expenses.